

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

TERRENCE M. BOOTH,

Petitioner,

v.

Civil Action No. **3:22CV398**

DAVID ANDERSON, WARDEN, et al.,

Respondents.

MEMORANDUM OPINION

Terrence M. Booth filed this action on May 25, 2022. (ECF No. 1.) In lieu of filing a petition for writ of habeas corpus, Booth submitted a motion asking for an extension of time in which to file a motion under 28 U.S.C. § 2254. (ECF No. 1, at 1.) Federal Courts, however, lack jurisdiction to consider the timeliness of a § 2254 petition until it is actually filed. *Gregory v. Bassett*, No. 3:07cv790, 2009 WL 455267, at *2 (E.D. Va. Feb. 23, 2009) (citations omitted); see *United States v. White*, 257 F. App'x 608, 609 (4th Cir. 2007) (holding that no case or controversy existed before § 2255 motion was actually filed (citing *United States v. Leon*, 203 F.3d 162, 164 (2d Cir. 2000))). Because a § 2254 petition did not accompany Booth's motion for an extension of time and because the motion did not contain any cognizable claims for habeas relief, Booth's motion for an extension of time, (ECF No. 1), will be DENIED. See *Ramirez v. United States*, 461 F. Supp. 2d 439, 440–41 (E.D. Va. 2006) (citations omitted).

The Court notes that Booth has now filed a 28 U.S.C. § 2254 petition that was opened by the Clerk as another civil action. Accordingly, Booth may proceed with his habeas petition under that case number. However, this action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Order shall issue.

Date: 6-30-2022
Richmond, Virginia

s/ 
M. Hannah Lauck
United States District Judge